

# A NEW CHILEAN CONSTITUTION: KEY PRINCIPLES FOR ADDRESSING HEALTH AND CLIMATE CHANGE



Image: Pristino Sur



## INTRODUCTION

Meeting seven of the nine UNFCCC (United Nations Framework Convention on Climate Change) criteria for vulnerability, Chile is threatened by a variety of climate impacts. (1) Chile's population of 19 million people is experiencing growth in climate-associated health risks due to the progression of global warming. The country is also highly exposed to multiple dangers such as earthquakes, volcanic activity, tsunamis, and hazards that can be intensified due to climate impacts, such as wildfires, floods, and landslides, and is currently experiencing a 12-year-long drought. Despite being a high-income country, 30% of Chile's population is recognized as economically vulnerable and the country exhibits high levels of inequality. (2)

Chile will soon make history by voting on a new constitution - the most important document within any country's political system. By establishing the bases of the State, its principles and values, the constitution sets the country's course. But this is a pivotal moment not only for Chile. According to the newest IPCC reports, the world is on track to breach the 1.5°C threshold of the Paris Agreement unless bold and transformative action is taken. Climate catastrophe threatens the lives and livelihoods of people around the globe, as well as ecosystem health and biodiversity. Studies show that constitutional provisions could support policymakers in the development of ambitious low-carbon strategies and goals, facilitating the delivery of a sustainable future. (3)

The Chilean constitutional process is thus both hugely important to the future health and wellbeing of the Chilean people, and also, a globally relevant example of system transformation in action, and of one approach to setting a jurisdiction on a course for a just and healthy future.

155 representatives were democratically elected to form a Constitutional Convention, respecting gender parity and reserving seats for Indigenous representatives. They were tasked to write a transformational text to satisfy long-standing demands for better living standards and equal access to quality healthcare and education. As soon as it started work, the Convention proclaimed that the constitution was being drafted within the context of a global climate emergency.

After a year of deliberations, the proposal for a new Chilean constitution is finalized and the Chilean people will vote to approve or reject the proposed text at a plebiscite in early September. (4)

The vote will follow the recent UN Human Rights Council resolution which declared access to a clean, healthy, and sustainable environment, as a universal human right. (5) This brief summarises the ways in which the proposal for a new Chilean Constitution sets a path to a healthier and fairer Chile, that leaves no one behind while preventing, mitigating, and adapting to the climate and environmental crisis, promoting ecological conscience and intergenerational justice.

Below is a translated selection of fundamental principles, rights, and guarantees, found in the proposal drafted by The Chilean Constitutional Convention that could protect the health and wellbeing of present and future generations in Chile, when accompanied by robust legislation to enable their implementation, monitoring, and compliance.





## CHAPTER I GENERAL PRINCIPLES

### Article 1

1. Chile is a social and democratic state of law. It is a multinational, intercultural, regional, and ecological state.

2. It is constituted as a solidary republic. Its democracy is inclusive and equal. It recognizes dignity, freedom, the substantive equality of human beings, and their indissoluble relationship with nature as intrinsic and inalienable values.

### Article 8

Individuals and peoples are interdependent with nature and form an inseparable whole with it. The State recognizes and promotes “living well” as a relationship of a harmonious balance between people, nature, and the organization of society.

## CHAPTER II FUNDAMENTAL RIGHTS AND GUARANTEES

### Article 39

The State guarantees environmental education that strengthens the preservation, conservation and care required with respect to the environment and nature, and that allows for the formation of ecological awareness.

### Article 44

1. Every person has the right to comprehensive health and well-being, including its physical and mental dimensions.

2. Indigenous peoples and nations have the right to their own traditional medicines, to maintain their health practices, and to conserve the natural components that sustain them.

3. The State must provide the necessary conditions to achieve the highest possible level of health, considering in all its decisions the impact of social and environmental determinants on the health of the population.

5. The National Health System is universal, public, and integrated. It is governed by the principles of equity, solidarity, interculturality, territorial relevance, deconcentration, efficacy, quality, opportunity, focus on gender, progressivity, and non-discrimination.

8. It is the duty of the State to ensure the strengthening and development of public health institutions.

10. The National Health System incorporates actions of promotion, prevention, diagnosis, treatment, habilitation, rehabilitation, and inclusion.

Primary healthcare is the basis of this system. The state promotes the participation of communities in the health policies and the conditions for their effective exercise.

### Article 45

1. Every person has the right to social security, founded on the principles of universality, solidarity, comprehensiveness, unity, equality, sufficiency, participation, sustainability, and opportunity.

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#### Article 46

6. In the rural and agricultural sphere, the State guarantees fair and dignified conditions in seasonal work, safeguarding the exercise of labor and social security rights.

#### Article 52

1. The right to the city and to the territory is a collective right aimed at the common good and is based on the full exercise of human rights in the territory, on its democratic management and on the social and ecological function of property.

4. The State guarantees protection and equitable access to basic services, goods and public spaces; safe and sustainable mobility; connectivity and road safety. Likewise, it promotes socio-spatial integration and participates in the surplus value generated by its urban planning or regulatory action.

#### Article 53

1. Right to live in safe and violence-free environments. It is the duty of the State to equitably protect the exercise of this right for all people, through a violence and crime prevention policy that will especially consider the material, environmental, and social conditions and the community strengthening of the territories.

#### Article 54

1. It is the duty of the State to ensure food sovereignty and security. For this, it will promote the production, distribution and consumption of food that guarantees the right to healthy and adequate food, fair trade and ecologically responsible food systems.

2. The State encourages ecologically sustainable agricultural production.

3. Recognizes, encourages and supports peasant and indigenous agriculture, harvesting and artisanal fishing, as fundamental activities for food production.

#### Article 56

1. Every person has the right to adequate, healthy, sufficient, nutritionally complete, and culturally relevant food. This right includes the guarantee of special food for those who require it for health reasons.

#### Article 57

1. Everyone has the human right to sufficient, healthy, acceptable, affordable, and accessible water and sanitation. It is the duty of the State to guarantee it for current and future generations.

#### Article 59

1. Every person has the right to a vital minimum of affordable and safe energy.

3. Likewise, the state regulates and promotes a distributed, decentralized, and diversified energy matrix, based on renewable energies with low environmental impact.

#### Article 79

1. The State recognizes and guarantees, in accordance with the Constitution, the right of indigenous peoples and nations to their lands, territories, and resources.

#### Article 81

1. Every person has the right, as a consumer or user, to free choice, to truthful information, not to be discriminated against, to safety, to the protection of their health and the environment, to adequate reparation and compensation, and education for responsible consumption.



#### Article 97

1. The Constitution guarantees freedom of scientific research.

3. The State will generate, in an independent and decentralized manner, the conditions for the development of transdisciplinary scientific research in matters relevant to safeguarding the population's quality of life and ecosystem balance. In addition, it will carry out permanent monitoring of environmental and health risks that affect the health of the country's communities and ecosystems.

#### Article 101

The state recognizes and protects the natural and cultural, material and immaterial heritage and guarantees its conservation, revitalization, increase, safeguard and transmission to future generations, regardless of the legal regime and ownership of said assets. It also encourages its dissemination and education.

#### Article 103

1. Nature has the right to be respected and its existence protected, regenerated, maintained, and restored of its functions and dynamic balances, which include natural cycles, ecosystems, and biodiversity.

2. The State must guarantee and promote the rights of Nature.

#### Article 104

Every person has the right to a healthy and ecologically balanced environment.

#### Article 105

Everyone has the right to clean air throughout their life cycle.

#### Article 108

8. The State guarantees the access to environmental justice.



## CHAPTER III NATURE AND ENVIRONMENT

#### Article 127

1. Nature has rights. The State and society have the duty to protect and respect them.

2. The State must adopt an ecologically responsible administration and promote environmental and scientific education through permanent training and learning processes.

#### Article 128

1. The principles for the protection of nature and the environment are, at least, those of progressive, precautionary, preventive, environmental justice, intergenerational solidarity, responsibility and fair climate action.

#### Article 129

1. It is the duty of the State to adopt prevention, adaptation and mitigation actions of the risks, vulnerabilities and effects caused by the climate and ecological crisis.

2. The State must promote dialogue, cooperation and international solidarity to adapt, mitigate and face the climate and ecological crisis and protect nature.

#### Article 130

The State protects biodiversity and must preserve, conserve and restore the habitat of native wild species in the quantity and distribution adequate to sustain the viability of their populations and ensure the conditions for their survival and non-extinction.

#### Article 132

Through a national system of protected areas, which is unique, comprehensive, and of a technical nature, the State must guarantee the preservation, restoration, and conservation of natural spaces. The State must also monitor and maintain up-to-date information regarding the attributes of said areas and guarantee the participation of local communities and territorial entities.

#### Article 133

It is the duty of the State to regulate and promote the management, reduction and recovery of waste.

## NATURAL COMMON GOODS

#### Article 134

1. Natural common goods are elements or components of nature over which the State has a special duty of custody in order to ensure the rights of nature and the interest of present and future generations.

2. Natural common goods are the territorial sea and its seabed area; beaches; waters, glaciers, and wetlands; geothermal fields; the air and the atmosphere; the high mountains, protected areas, and native forests; the subsoil, and others declared by the Constitution and the law.

6. Any person may demand compliance with the constitutional duties of custody of natural common property. The law will determine the procedure and requirements of this action.

#### Article 135

1. The State must promote measures to conserve the atmosphere and the night sky, according to territorial needs.

#### Article 137

The State guarantees the protection of glaciers and the glacial environment, including frozen soils and their ecosystem functions.

#### Article 138

The State shall protect the ecological and social function of the land.

## STATUTE OF WATERS

#### Article 140

1. Water is essential for life and the exercise of human and nature's rights. The State must protect the waters, in all their states and phases, and their hydrological cycle.

2. The exercise of the human right to water, sanitation, and the balance of ecosystems will always prevail. The law will determine the other uses.

#### Article 144

1. The National Water Agency is an autonomous body, with legal personality and its own assets, which functions in a decentralized manner and is responsible for ensuring the sustainable use of water for present and future generations, access to the human right to water and sanitation and the conservation and preservation of its associated ecosystems. To do this, it is responsible for collecting information, coordinating, directing and supervising the actions of the State bodies with powers in water matters and of individuals, where appropriate.



## STATUTE OF MINERALS

### Article 145

1. The State has an absolute, exclusive, inalienable, and imprescriptible domain of all mines and mineral substances, metallic, non-metallic as well as of all deposits of fossil substances and hydrocarbons existing in the national territory, with the exception of surface clays, without prejudice to the ownership of the land on which they are located.

2. The exploration, exploitation, and use of these substances will be subject to a regulation that considers their finite, non-renewable nature, intergenerational public interest, and environmental protection.

## CHAPTER IV DEMOCRATIC PARTICIPATION

### Article 154

1. It is the duty of the State to guarantee environmental democracy. The right to informed participation in environmental matters is recognized. Participation mechanisms will be determined by law.

2. All persons have the right to access environmental information that is in the possession or custody of the State. Individuals must deliver the environmental information related to their activity, in the terms established by law.

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## OMBUDSMAN OF NATURE

### Artículo 148

1. An autonomous body, with legal personality and its own assets, called the Ombudsman of Nature, will have the function of promotion and protection of the rights of Nature and environmental rights guaranteed in this Constitution, in international environmental treaties which are ratified and in force in Chile, against the acts or omissions of the organs of the State Administration and private entities.

## CHAPTER VI REGIONAL STATE AND TERRITORIAL ORGANIZATION

### Article 197

2. This (the State) will have the purpose of ensuring an adequate location of settlements and productive activities, which will allow responsible management of ecosystems and human activities, with criteria of equity and territorial justice for intergenerational well-being.



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THE GLOBAL  
CLIMATE & HEALTH  
ALLIANCE



Image: Prístino Sur

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